



General Assembly

February Session, 2014

**Governor's Bill No. 22**

LCO No. 558



Referred to Committee on APPROPRIATIONS

Introduced by:

SEN. WILLIAMS, 29<sup>th</sup> Dist.

SEN. LOONEY, 11<sup>th</sup> Dist.

REP. SHARKEY, 88<sup>th</sup> Dist.

REP. ARESIMOWICZ, 30<sup>th</sup> Dist.

**AN ACT CONCERNING THE PREVENTION OF FRAUD IN  
GOVERNMENT PROGRAMS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) As used in this section and  
2       section 2 of this act:

3       (1) "Knowing" and "knowingly" means that a person, with respect to  
4       information: (A) Has actual knowledge of the information; (B) acts in  
5       deliberate ignorance of the truth or falsity of the information; or (C)  
6       acts in reckless disregard of the truth or falsity of the information,  
7       without regard to whether the person intends to defraud;

8       (2) "Claim" (A) means any request or demand, whether under a  
9       contract or otherwise, for money or property and whether or not the  
10      state has title to the money or property, that (i) is presented to an  
11      officer, employee or agent of the state, or (ii) is made to a contractor,

12 grantee or other recipient, if the money or property is to be spent or  
13 used on the state's behalf or to advance a state program or interest, and  
14 if the state provides or has provided any portion of the money or  
15 property that is requested or demanded, or if the state will reimburse  
16 such contractor, grantee or other recipient for any portion of the  
17 money or property that is requested or demanded, and (B) does not  
18 include a request or demand for money or property that the state has  
19 paid to an individual as compensation for state employment or as an  
20 income subsidy with no restrictions on that individual's use of the  
21 money or property;

22 (3) "Person" means any natural person, corporation, limited liability  
23 company, firm, association, organization, partnership, business, trust  
24 or other legal entity;

25 (4) "State" means the state of Connecticut, any agency or department  
26 of the state or any quasi-public agency, as defined in section 1-120 of  
27 the general statutes;

28 (5) "Obligation" means an established duty, whether fixed or not,  
29 arising from (A) an express or implied contractual, grantor-grantee or  
30 licensor-licensee relationship, (B) a fee-based or similar relationship,  
31 (C) statute or regulation, or (D) the retention of an overpayment;

32 (6) "Material" means having a natural tendency to influence, or be  
33 capable of influencing, the payment or receipt of money or property;  
34 and

35 (7) "State-administered health or human services program" means  
36 programs administered by any of the following: The Department on  
37 Aging, the Department of Children and Families, the Department of  
38 Developmental Services, the Department of Mental Health and  
39 Addiction Services, the Department of Public Health, the Department  
40 of Rehabilitation Services, the Department of Social Services, the Office  
41 of Early Childhood, and the Office of the State Comptroller, for the  
42 State Employee and Retiree Health programs, as well as other health

43 care programs administered by the Office of the State Comptroller, and  
44 the Department of Administrative Services, for Workers'  
45 Compensation medical claims, including such programs reimbursed in  
46 whole or in part by the federal government.

47 Sec. 2. (NEW) (*Effective from passage*) (a) No person shall:

48 (1) Knowingly present, or cause to be presented, a false or  
49 fraudulent claim for payment or approval under a state-administered  
50 health or human services program;

51 (2) Knowingly make, use or cause to be made or used, a false record  
52 or statement material to a false or fraudulent claim under a state-  
53 administered health or human services program;

54 (3) Conspire to commit a violation of this section;

55 (4) Having possession, custody or control of property or money  
56 used, or to be used, by the state relative to a state-administered health  
57 or human services program, and intending to defraud the state or  
58 wilfully to conceal the property, deliver or cause to be delivered less  
59 property than the amount for which the person receives a certificate or  
60 receipt;

61 (5) Being authorized to make or deliver a document certifying  
62 receipt of property used, or to be used, by the state relative to a state-  
63 administered health or human services program and intending to  
64 defraud the state, make or deliver such document without completely  
65 knowing that the information on the document is true;

66 (6) Knowingly buy, or receive as a pledge of an obligation or debt,  
67 public property from an officer or employee of the state relative to a  
68 state-administered health or human services program, who lawfully  
69 may not sell or pledge the property;

70 (7) Knowingly make, use or cause to be made or used, a false record  
71 or statement material to an obligation to pay or transmit money or

72 property to the state under a state-administered health or human  
73 services program; or

74 (8) Knowingly conceal or knowingly and improperly avoid or  
75 decrease an obligation to pay or transmit money or property to the  
76 state under a state-administered health or human services program.

77 (b) Any person who violates the provisions of subsection (a) of this  
78 section shall be liable to the state for: (1) A civil penalty of not less than  
79 five thousand five hundred dollars or more than eleven thousand  
80 dollars, or as adjusted from time to time by the federal Civil Penalties  
81 Inflation Adjustment Act of 1990, 28 USC 2461, (2) three times the  
82 amount of damages that the state sustains because of the act of that  
83 person, and (3) the costs of investigation and prosecution of such  
84 violation. Liability under this section shall be joint and several for any  
85 violation of this section committed by two or more persons.

86 (c) Notwithstanding the provisions of subsection (b) of this section  
87 concerning treble damages, if the court finds that: (1) A person  
88 committing a violation of subsection (a) of this section furnished  
89 officials of the state responsible for investigating false claims violations  
90 with all information known to such person about the violation not later  
91 than thirty days after the date on which the person first obtained the  
92 information; (2) such person fully cooperated with an investigation by  
93 the state of such violation; and (3) at the time such person furnished  
94 the state with the information about the violation, no criminal  
95 prosecution, civil action or administrative action had commenced  
96 under sections 3 to 7, inclusive, of this act with respect to such  
97 violation, and such person did not have actual knowledge of the  
98 existence of an investigation into such violation, the court may assess  
99 not less than two times the amount of damages which the state  
100 sustains because of the act of such person. Any information furnished  
101 pursuant to this subsection shall be exempt from disclosure under  
102 section 1-210 of the general statutes.

103       Sec. 3. (NEW) (*Effective from passage*) The Attorney General may  
104       investigate any violation of subsection (a) of section 2 of this act. Any  
105       information obtained pursuant to this investigation shall be exempt  
106       from disclosure under section 1-210 of the general statutes. If the  
107       Attorney General finds that a person has violated or is violating any  
108       provision of subsection (a) of section 2 of this act, the Attorney General  
109       may bring a civil action in the superior court for the judicial district of  
110       Hartford under this section in the name of the state against such  
111       person.

112       Sec. 4. (NEW) (*Effective from passage*) (a) A person may bring a civil  
113       action in the superior court for the judicial district of Hartford against  
114       any person who violates subsection (a) of section 2 of this act, for the  
115       person who brings the action and for the state. Such civil action shall  
116       be brought in the name of the state. The action may thereafter be  
117       withdrawn only if the court and the Attorney General give written  
118       consent to the withdrawing of such action and their reasons for  
119       consenting.

120       (b) A copy of the complaint and written disclosure of substantially  
121       all material evidence and information the person possesses shall be  
122       served on the state by serving the Attorney General in the manner  
123       prescribed in section 52-64 of the general statutes. The complaint shall  
124       be filed in camera, shall remain under seal for at least sixty days and  
125       shall not be served on the defendant until the court so orders. The  
126       court, upon motion of the Attorney General, may, for good cause  
127       shown, extend the time during which the complaint remains under  
128       seal. Such motion may be supported by affidavits or other submissions  
129       in camera. Prior to the expiration of the time during which the  
130       complaint remains under seal, the Attorney General shall: (1) Proceed  
131       with the action in which case the action shall be conducted by the  
132       Attorney General, or (2) notify the court that the Attorney General  
133       declines to take over the action in which case the person bringing the  
134       action shall have the right to conduct the action.

135 (c) If the court orders that the complaint be unsealed and served, the  
136 Superior Court shall issue an appropriate order of notice requiring the  
137 same notice that is ordinarily required to commence a civil action. The  
138 defendant shall not be required to respond to any complaint filed  
139 under this section until thirty days after the complaint is served upon  
140 the defendant.

141 (d) If a person brings an action under this section, no person other  
142 than the state may intervene or bring a related action based on the facts  
143 underlying the pending action.

144 Sec. 5. (NEW) (*Effective from passage*) (a) If the Attorney General,  
145 pursuant to section 4 of this act, elects to proceed with the action, the  
146 Attorney General shall have the primary responsibility for prosecuting  
147 the action and shall not be bound by any act of the person bringing the  
148 action. Such person shall have the right to continue as a party to the  
149 action, subject to the limitations set forth in this section.

150 (b) The Attorney General may withdraw such action  
151 notwithstanding the objections of the person bringing the action if the  
152 Attorney General has notified the person of the filing of the motion  
153 and the court has provided the person with an opportunity for a  
154 hearing on the motion.

155 (c) The Attorney General may settle the action with the defendant  
156 notwithstanding the objections of the person bringing the action if the  
157 court determines, after a hearing, that the proposed settlement is fair,  
158 adequate and reasonable under all the circumstances. Upon a showing  
159 of good cause, such hearing may be held in camera.

160 (d) Upon a showing by (1) the Attorney General that unrestricted  
161 participation during the course of the litigation by the person bringing  
162 the action would (A) interfere with or unduly delay the Attorney  
163 General's prosecution of the case, or (B) be repetitious, irrelevant or for  
164 purposes of harassment; or (2) the defendant that unrestricted  
165 participation during the course of the litigation by the person bringing

166 the action would be for purposes of harassment, or would cause the  
167 defendant undue burden or unnecessary expense, the court may, in its  
168 discretion, impose limitations on the person's participation, including,  
169 but not limited to, (i) limiting the number of witnesses that such  
170 person may call, (ii) limiting the length of the testimony of any such  
171 witnesses, (iii) limiting the person's cross-examination of any such  
172 witnesses, or (iv) otherwise limiting the participation by the person in  
173 the litigation.

174 (e) If the court awards civil penalties or damages to the state or if the  
175 Attorney General settles with the defendant and receives civil  
176 penalties or damages, the person bringing such action shall receive  
177 from the proceeds not less than fifteen per cent but not more than  
178 twenty-five per cent of such proceeds of the action or settlement of the  
179 claim, based upon the extent to which the person substantially  
180 contributed to the prosecution of the action. Any such person shall also  
181 receive an amount for reasonable expenses which the court finds to  
182 have been necessarily incurred, plus reasonable attorneys' fees and  
183 costs. All such expenses, fees and costs shall be awarded against the  
184 defendant.

185 (f) Notwithstanding the provisions of subsection (e) of this section,  
186 where the action is one that the court finds to be based primarily on  
187 disclosures of specific information that was not provided by the person  
188 bringing the action relating to allegations or transactions (1) in a  
189 criminal, civil or administrative hearing, (2) in a report, hearing, audit  
190 or investigation conducted by the General Assembly, a committee of  
191 the General Assembly, the Auditors of Public Accounts, a state agency  
192 or a quasi-public agency, or (3) from the news media, the court may  
193 award from such proceeds to the person bringing the action such sums  
194 as it considers appropriate, but in no case more than ten per cent of the  
195 proceeds, taking into account the significance of the information and  
196 the role of the person bringing the action in advancing the case to  
197 litigation. Any such person shall also receive an amount for reasonable  
198 expenses that the court finds to have been necessarily incurred, plus

199 reasonable attorneys' fees and costs. All such expenses, fees and costs  
200 shall be awarded against the defendant.

201       Sec. 6. (NEW) (*Effective from passage*) (a) If the Attorney General  
202 declines to proceed with the action, the person who brought the action  
203 shall have the right to conduct the action. In the event that the  
204 Attorney General declines to proceed with the action, upon the request  
205 of the Attorney General, the court shall order that copies of all  
206 pleadings filed in the action and copies of any deposition transcripts be  
207 provided to the state. When the person who brought the action  
208 proceeds with the action, the court, without limiting the status and  
209 rights of such person, may permit the Attorney General to intervene at  
210 a later date upon a showing of good cause.

211       (b) A person bringing an action under this section or settling the  
212 claim shall receive an amount which the court decides is reasonable for  
213 collecting the civil penalty and damages. The amount shall be not less  
214 than twenty-five per cent or more than thirty per cent of the proceeds  
215 of the action or settlement and shall be paid out of such proceeds. Such  
216 person shall also receive an amount for reasonable expenses that the  
217 court finds to have been necessarily incurred, plus reasonable  
218 attorneys' fees and costs. All such expenses, fees and costs shall be  
219 awarded against the defendant.

220       (c) If a defendant prevails in the action conducted under this section  
221 and the court finds that the claim of the person bringing the action was  
222 clearly frivolous, clearly vexatious or brought primarily for purposes  
223 of harassment, the court may award reasonable attorneys' fees and  
224 expenses to the defendant.

225       (d) Irrespective of whether the Attorney General proceeds with the  
226 action, upon request and showing by the Attorney General that certain  
227 motions or requests for discovery by a person bringing the action  
228 would interfere with the state's investigation or prosecution of a  
229 criminal or civil matter arising out of the same facts, the court may stay



230 such discovery for a period of not more than sixty days from the date  
231 of the order of the stay. Such a showing shall be conducted in camera.  
232 The court may extend the stay for an additional sixty-day period upon  
233 a further showing in camera that the state has pursued the criminal or  
234 civil investigation or proceedings with reasonable diligence and any  
235 proposed discovery in the civil action will interfere with the ongoing  
236 criminal or civil investigation or proceedings. For the purposes of this  
237 subsection, the Chief State's Attorney or state's attorney for the  
238 appropriate judicial district may appear to explain to the court the  
239 potential impact of such discovery on a pending criminal investigation  
240 or prosecution.

241       Sec. 7. (NEW) (*Effective from passage*) Notwithstanding the provisions  
242 of section 4 of this act, the Attorney General may elect to pursue the  
243 state's claim through any alternate remedy available to the state,  
244 including any administrative proceeding to determine a civil penalty.  
245 If any such alternate remedy is pursued in another proceeding, the  
246 person bringing the action shall have the same rights in such  
247 proceeding as such person would have had if the action had continued  
248 under the provisions of sections 4 to 6, inclusive, of this act. Any  
249 finding of fact or conclusion of law made in such other proceeding that  
250 has become final shall be conclusive on all parties to an action under  
251 sections 4 to 6, inclusive, of this act. A finding or conclusion is final if it  
252 has been finally determined on appeal to the appropriate court of the  
253 state, if the time for filing such an appeal with respect to the finding or  
254 conclusion has expired or if the finding or conclusion is not subject to  
255 judicial review.

256       Sec. 8. (NEW) (*Effective from passage*) Notwithstanding the provisions  
257 of sections 5 and 6 of this act, if the court finds that the action was  
258 brought by a person who planned and initiated the violation of  
259 subsection (a) of section 2 of this act, upon which violation an action  
260 was brought, then the court may reduce the share of the proceeds of  
261 the action that the person would otherwise receive under section 5 or 6  
262 of this act, taking into account the role of that person in advancing the

263 case to litigation and any relevant circumstances pertaining to the  
264 violation. If a person bringing the action is convicted of criminal  
265 conduct arising from his or her role in the violation of subsection (a) of  
266 section 2 of this act, such person shall be dismissed from the civil  
267 action and shall not receive any share of the proceeds of the action.  
268 Such dismissal shall not prejudice the right of the Attorney General to  
269 continue the action.

270       Sec. 9. (NEW) (*Effective from passage*) (a) No court shall have  
271 jurisdiction over an action brought under section 4 of this act (1)  
272 against a member of the General Assembly, a member of the judiciary  
273 or an elected officer or department head of the state if the action is  
274 based on evidence or information known to the state when the action  
275 was brought; or (2) that is based upon allegations or transactions that  
276 are the subject of a civil suit or an administrative civil penalty  
277 proceeding in which the state is already a party.

278       (b) Unless opposed by the state, the court shall dismiss an action or  
279 claim brought under section 4 of this act if allegations or transactions  
280 that are substantially the same as those alleged in the action or claim  
281 were publicly disclosed (1) in a state criminal, civil or administrative  
282 hearing in which the state or its agent is a party, (2) in a report,  
283 hearing, audit or investigation conducted by the General Assembly, a  
284 committee of the General Assembly, the Auditors of Public Accounts, a  
285 state agency or quasi-public agency, or (3) by the news media, except  
286 the court shall not dismiss such action or claim if the action or claim is  
287 brought by the Attorney General or the person who is an original  
288 source of information.

289       (c) For purposes of this section, "original source" means an  
290 individual who (1) voluntarily discloses to the state information on  
291 which the allegations or transactions in an action or claim are based,  
292 prior to public disclosure of such information as described in  
293 subdivisions (1), (2) and (3) of subsection (b) of this section, or (2) has  
294 knowledge that is independent of and materially adds to the publicly

295 disclosed allegations or transactions and has voluntarily provided the  
296 information to the state before filing an action or claim under sections  
297 3 to 7, inclusive, of this act.

298       Sec. 10. (NEW) (*Effective from passage*) The state of Connecticut shall  
299 not be liable for expenses which a person incurs in bringing an action  
300 under sections 4 to 7, inclusive, of this act.

301       Sec. 11. (NEW) (*Effective from passage*) (a) Any employee, contractor,  
302 or agent shall be entitled to all relief necessary to make that employee,  
303 contractor, or agent whole, if that employee, contractor, or agent is  
304 discharged, demoted, suspended, threatened, harassed, or in any other  
305 manner discriminated against in the terms and conditions of  
306 employment because of lawful acts done by the employee, contractor,  
307 agent or associated others in furtherance of an action under sections 3  
308 to 7, inclusive, of this act or other efforts to stop one or more violations  
309 of sections 1 to 15, inclusive, of this act.

310       (b) Relief under subsection (a) of this section shall include  
311 reinstatement with the same seniority status that the employee,  
312 contractor, or agent would have had but for the discrimination, two  
313 times the amount of back pay, interest on the back pay, and  
314 compensation for any special damages sustained as a result of the  
315 discrimination, including litigation costs and reasonable attorneys'  
316 fees. An action under this section may be brought in the Superior  
317 Court for the relief provided in this section.

318       (c) A civil action under this section may not be brought more than  
319 three years after the date when the retaliation occurred.

320       Sec. 12. (NEW) (*Effective from passage*) A civil action under sections 3  
321 to 7, inclusive, of this act may not be brought: (1) More than six years  
322 after the date on which the violation of subsection (a) of section 2 of  
323 this act is committed, or (2) more than three years after the date when  
324 facts material to the right of action are known or reasonably should  
325 have been known by the official of the state charged with

326 responsibility to act in the circumstances, but in no event more than  
327 ten years after the date on which the violation is committed, whichever  
328 last occurs. If the state elects to intervene and proceed with an action  
329 brought under sections 3 to 7, inclusive, of this act the state may file its  
330 own complaint or amend the complaint of a person who has brought  
331 an action under sections 3 to 7, inclusive, of this act to clarify or add  
332 detail to claims in which the state is intervening and to add any  
333 additional claim under which the state contends that it is entitled to  
334 relief. For statute of limitation purposes, any such state pleading shall  
335 relate back to the filing date of the complaint of the person who  
336 originally brought the action to the extent that the claim of the state  
337 arises out of the conduct, transactions or occurrences set forth or  
338 attempted to be set forth in the prior complaint of such person.

339       Sec. 13. (NEW) (*Effective from passage*) In any action brought under  
340 sections 3 to 7, inclusive, of this act the Attorney General or the person  
341 initiating such action shall be required to prove all essential elements  
342 of the cause of action, including damages, by a preponderance of the  
343 evidence.

344       Sec. 14. (NEW) (*Effective from passage*) Notwithstanding any other  
345 provision of law, a final judgment rendered in favor of the state  
346 against a defendant in any criminal proceeding charging fraud or false  
347 statements, whether upon a verdict after trial or upon a plea of guilty  
348 or nolo contendere, shall estop such defendant from denying the  
349 essential elements of the offense in any action which involves the same  
350 transaction as in the criminal proceeding and which is brought in  
351 accordance with the provisions of sections 3 to 7, inclusive, of this act.

352       Sec. 15. (NEW) (*Effective from passage*) The provisions of sections 1 to  
353 15, inclusive, of this act and subsection (a) of section 4-61dd of the  
354 general statutes are not exclusive, and the remedies provided for shall  
355 be in addition to any other remedies provided for in any other  
356 provision of the general statutes or federal law or available under  
357 common law.

358 Sec. 16. (NEW) (*Effective from passage*) On January 1, 2015, and  
 359 annually thereafter, the Attorney General shall submit a report to the  
 360 General Assembly and the Governor, in accordance with section 11-4a  
 361 of the general statutes, that contains the following information:

362 (1) The number of civil actions the Attorney General filed during the  
 363 previous fiscal year under sections 3 to 7, inclusive, of this act;

364 (2) The number of civil actions private persons filed during the  
 365 previous fiscal year under sections 3 to 7, inclusive, of this act  
 366 including the number of civil actions that remain under seal, along  
 367 with (A) the state or federal courts in which such civil actions were  
 368 filed and the number of civil actions filed in each such court, (B) the  
 369 state program or agency involved in each civil action, and (C) the  
 370 number of civil actions filed by private individuals who previously  
 371 had filed an action based on the same or similar transactions or  
 372 allegations under the federal False Claims Act, 31 USC 3729-3733, as  
 373 amended from time to time, or the false claims act of any other state;  
 374 and

375 (3) The amount that was recovered by the state under sections 3 to 7,  
 376 inclusive, of this act in settlement, damages and penalties and the  
 377 litigation cost, if known, along with the (A) case number and parties  
 378 for each civil action where there was a recovery, (B) separate amount  
 379 of any funds recovered for damages, penalties and litigation costs, and  
 380 (C) percentage of the recovery and the amount that the state paid to  
 381 any private person who brought the civil action.

382 Sec. 17. Sections 17b-301a to 17b-301p, inclusive, of the general  
 383 statutes are repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>from passage</i>	New section
Sec. 11	<i>from passage</i>	New section
Sec. 12	<i>from passage</i>	New section
Sec. 13	<i>from passage</i>	New section
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>from passage</i>	New section
Sec. 16	<i>from passage</i>	New section
Sec. 17	<i>from passage</i>	Repealer section

**Statement of Purpose:**

To prevent fraud in all state-administered programs.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*